Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO 44–110 OF 1998
ABDUL WAHAB J
7 NOVEMBER 1998

Administrative Law *— Remedies — Habeas corpus — Accused serving sentence imposed by sessions court — Allegation that sessions court had no competent jurisdiction to hear and sentence accused — Whether application of writ is as of right — Whether existence of alternative remedies is bar to right — Federal Constitution art 5(2) — Criminal Procedure Code (FMS Cap 6) s 365*

Criminal Procedure *— Prosecution — Right to conduct prosecution — Discretion of Public Prosecutor to institute, conduct or discontinue criminal proceedings — Whether discretion extends to syariah court*

Islamic Law *— Jurisdiction — Syariah court — Offence of 'liwat' under Syariah Criminal Offences (Federal Territories) Act 1997 — Offence of 'gross indecency' under Penal Code — Whether jurisdiction of sessions court ousted — Federal Constitution art 121(1A)*

The applicant pleaded guilty to a charge under s 377D of the Penal Code (FMS Cap 45). He was convicted and sentenced to six months' imprisonment for an act of gross indecency by the Sessions Court, Kuala Lumpur on 19 September 1998. He appealed against sentence and filed an application for a writ of habeas corpus. The application was made under art 5(2) of the Federal Constitution ('the Constitution') and based on the ground that since the parties to the offence were Muslims, the sessions court had no jurisdiction to hear, convict and sentence the applicant by virtue of art 121(1A) of the Constitution and the Syariah Criminal Offences (Federal Territories) Act 1997 ('the Act'). The applicant did not however assert that he was a Muslim and only the supporting affidavits to the application deposed by his sister averred that the applicant was a Muslim.

The issue before the court was whether the operation of art 121(1A) read with s 25 of the Act had ousted the jurisdiction of the sessions court over the applicant in respect of his admitted act of sodomy. The prosecution made a preliminary objection and submitted that the question of whether or not the sessions court had jurisdiction could only be dealt with by way of an appeal or revision under the Criminal Procedure Code (FMS Cap 6) ('the CPC') and hence a writ of habeas corpus was not available.

Held, dismissing the preliminary objection and the application:

(1) Article 5(2) of the Constitution makes it mandatory for the court to hear the complaint and unless satisfied that the detention is lawful, the court must order the person to be produced before it

A and to release him; *Yeap Hock Seng v Minister of Home Affairs, Malaysia & Ors* [1975] 2 MLJ 279 followed. It is not necessary for an applicant to show that there is no other process available (see p 750H); *Kharak Singh v Uttar Pradesh* AIR 1963 SC 1295 followed. Article 5(2) was included in the Constitution notwithstanding that there already existed provisions for directions B in the nature of habeas corpus in the CPC. Section 365 of the CPC cannot be read as to restrict the meaning of art 5(2). In a matter involving not merely a question of exceeding its jurisdiction but the competency of the court itself, and an applicant is being detained or imprisoned by an order of that court, habeas corpus C must be available as a remedy under art 5(2). The court would be taking a major step backwards contrary to the letter and spirit of art 5 of the Constitution if it were to accept the preliminary objection and order the applicant to rely on the appeal procedure alone. Thus the preliminary objection was dismissed (see pp 750I and 751B, E–F).

D (2) The State List is a list of the matters over which the State legislature is given power to legislate. One of the powers given to the State by virtue of item 1 is to make laws to set up syariah courts and the power of creation and punishment of offences by persons professing the religion of Islam against precepts of that E religion, except in regard to matters included in the Federal List. The power granted to the State does not extend to creation of criminal laws, and where offences are created in the course of legislating on matters within the State's power to make laws under item 1, the syariah court would have jurisdiction over such offences only to the extent jurisdiction is conferred upon it by F federal law (see pp 753C–D, 754I and 755E–F); *Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib* [1992] 2 MLJ 793 followed; *Nor Kursiah bte Baharuddin v Shahril bin Lamin & Anor* [1997] 1 MLJ 537 and *Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur* [1998] 1 MLJ 681 G distinguished. The offence of 'liwat' is one over which the syariah court has been conferred jurisdiction by federal law and requires that the accused be a Muslim. By virtue of art 121(1A) of the Constitution, the offence of 'liwat' is solely within the jurisdiction of the syariah court and thus the sessions court has no jurisdiction over the offence of 'liwat' (see pp 756F–I and 757A).

H (3) Article 121(1A) together with item 1 confers upon the syariah court jurisdiction over an offence and not an act. Article 121(1A) therefore confers upon the syariah court exclusive jurisdiction over the offence of 'liwat', not the act of sodomy per se. Article 121(1A) does not remove the jurisdiction of the sessions I court over a Muslim for any offence jurisdiction over which has not been specifically conferred upon the syariah court. Thus, since jurisdiction over the offences created by s 377A or s 377D of the Penal Code has not been conferred upon the syariah court

by federal law, the sessions court retains jurisdiction over these offences. Thus in this case, the sessions court was a court of competent jurisdiction and the applicant was lawfully sentenced to imprisonment by the sessions court. Habeas corpus could not therefore be granted (see pp 757B–D and 760D–E).

(4) The question of whether a person is a Muslim is for the syariah court to decide. The sessions court prima facie has jurisdiction over an offence unless and until a subsequent claim of being a Muslim is conceded or properly established. The proper course to take is to adduce additional evidence if the issue is not conceded upon (see p 759F–I).

(5) The Public Prosecutor has no power to institute, conduct or discontinue any proceedings for an offence in a syariah court, a native court or a court-martial. A court before which a charge is produced is only concerned with, before convicting on a plea of guilty whether all the elements of the charge are admitted, or in the event of a trial, whether all of the elements of the charge are proven beyond reasonable doubt. It is improper for the court to amend a charge to a more serious charge merely because the facts suggest a more serious offence. That would amount to interference with the sole discretion of the Attorney General under art 145(3) of the Constitution and s 376(1) of the CPC. His discretion is unfettered and it is not for the court to question that decision (see pp 758G–H and 759B–C); *Karpal Singh & Anor v PP* [1991] 2 MLJ 544; *PP v Lee Tin Bau* [1985] 1 MLJ 388; *PP v Lim Shui Wang & Ors* [1979] 1 MLJ 65; *PP v Datuk Harun bin Haji Idris & Ors* [1976] 2 MLJ 116 and *Long bin Samat & Ors* [1974] 2 MLJ 152 followed.

[Bahasa Malaysia summary

Pemohon telah mengaku salah kepada satu pertuduhan di bawah s 377D Kanun Keseksaan (NMB Bab 45). Beliau telah disabitkan dan dihukum penjara selama enam bulan bagi perbuatan kelucahan melampau oleh Mahkamah Sesyen, Kuala Lumpur pada 19 September 1998. Beliau telah merayu terhadap hukuman dan memfailkan satu permohonan untuk writ habeas corpus. Permohonan itu telah dibuat di bawah perkara 5(2) Perlembagaan Persekutuan ('Perlembagaan') dan berdasarkan alasan bahawa oleh kerana pihak-pihak kepada kesalahan itu adalah orang Islam, mahkamah sesyen tidak mempunyai bidang kuasa untuk mendengar, menyabit dan menghukum pemohon disebabkan perkara 121(1A) Perlembagaan dan Akta Kesalahan-Kesalahan Jenayah Syariah (Wilayah Persekutuan) 1997 ('Akta tersebut'). Walau bagaimanapun, pemohon telah tidak menegaskan bahawa beliau adalah seorang Islam dan hanya afidavit-afidavit sokongan kepada permohonan tersebut yang dideposkan oleh saudara perempuan beliau menegaskan bahawa pemohon adalah seorang Islam.

A Isu di hadapan mahkamah adalah sama ada operasi perkara 121(1A) dibaca bersama s 25 Akta tersebut telah menyingkir bidang kuasa mahkamah sesyen ke atas pemohon berhubung dengan perbuatan liwat yang diakuinya. Pihak pendakwaan telah membuat bantahan awal dan berhujah bahawa persoalan sama ada mahkamah sesyen mempunyai bidang kuasa atau pun tidak hanya boleh diuruskan melalui satu rayuan atau semakan di bawah Kanun Acara Jenayah (NMB Bab 6) ('KAJ') dan dengan itu writ habeas corpus tidak boleh dipohon.

Diputuskan, menolak bantahan awal dan permohonan:

(1) Perkara 5(2) Perlembagaan menjadikannya mandatori bagi mahkamah mendengar aduan tersebut dan melainkan ia berpuas hati bahawa tahanan adalah di sisi undang-undang, mahkamah semestinya memerintah supaya orang itu dikemukakan di hadapannya dan hendaklah melepaskannya; *Yeap Hock Seng v Minister of Home Affairs, Malaysia & Ors* [1975] 2 MLJ 279 diikut. Adalah tidak perlu bagi seseorang pemohon menunjukkan bahawa tidak terdapat proses yang lain (lihat ms 750H); *Kharak Singh v Uttar Pradesh* AIR 1963 SC 1295 diikut. Perkara 5(2) telah dimasukkan dalam Perlembagaan meskipun bahawa telah pun wujud peruntukan-peruntukan untuk arahan dalam sifat habeas corpus di dalam KAJ. Seksyen 365 KAJ tidak boleh dibaca untuk menghadkan maksud perkara 5(2). Dalam sesuatu perkara yang melibatkan bukan hanya persoalan melampaui bidang kuasanya tetapi sifat kompeten mahkamah itu sendiri, dan seseorang pemohon ditahan atau dipenjarakan melalui perintah mahkamah itu, habeas corpus mestilah terdapat sebagai satu remedi di bawah perkara 5(2). Mahkamah akan mengambil langkah yang besar ke belakang bertentangan dengan perkataan dan semangat yang tersurat dalam perkara 5 Perlembagaan jika ia menerima bantahan awal tersebut dan memerintahkan pemohon supaya bergantung kepada prosedur rayuan itu sahaja. Dengan itu bantahan awal tersebut telah ditolak (lihat ms 750I dan 751B, E–F).

(2) Senarai Negeri adalah satu senarai perkara-perkara ke atas yang mana Badan Perundangan Negeri diberi kuasa untuk membuat undang-undang. Salah satu kuasa yang diberikan kepada Negeri menurut perkara 1 adalah untuk membuat undang-undang bagi menubuhkan mahkamah-mahkamah syariah dan kuasa perwujudan dan hukuman kesalahan-kesalahan yang dilakukan oleh orang-orang yang menganut agama Islam terhadap ajaran agama itu, melainkan berhubung dengan perkara-perkara yang termasuk di dalam Senarai Persekutuan. Kuasa yang diberikan kepada Negeri itu tidak berlanjutan kepada perwujudan undang-undang jenayah, dan di mana kesalahan-kesalahan diwujudkan dalam proses menggubal undang-undang mengenai perkara-perkara dalam lingkungan kuasa Negeri untuk membuat undang-undang di bawah butiran 1, mahkamah syariah akan mempunyai

bidang kuasa di atas kesalahan-kesalahan yang sedemikian hanya setakat mana bidang kuasa dianugerahkan ke atasnya oleh undang-undang persekutuan (lihat ms 753C–D, 754I dan 755E–F); *Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib* [1992] 2 MLJ 793 diikut; *Nor Kursiah bte Baharuddin v Shahril bin Lamin & Anor* [1997] 1 MLJ 537 dan *Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur* [1998] 1 MLJ 681 dibeza. Kesalahan 'liwat' adalah satu kesalahan di mana mahkamah syariah telah diberikan bidang kuasa oleh undang-undang persekutuan dan menghendaki supaya tertuduh adalah seorang Islam. Menurut perkara 121(1A) Perlembagaan, kesalahan 'liwat' adalah semata-mata di dalam bidang kuasa mahkamah syariah dan dengan itu mahkamah sesyen tidak mempunyai bidang kuasa ke atas kesalahan 'liwat' (lihat ms 756F–I dan 757A).

(3) Perkara 121(1A) bersama-sama dengan butiran 1 menganugerahkan ke atas mahkamah syariah bidang kuasa di atas satu kesalahan dan bukannya satu perbuatan. Perkara 121(1A) dengan itu menganugerahkan ke atas mahkamah syariah bidang kuasa eksklusif di atas kesalahan 'liwat', bukannya perbuatan meliwat per se. Perkara 121(1A) tidak membatalkan bidang kuasa mahkamah sesyen ke atas seseorang Islam untuk mana-mana kesalahan ke atas yang mana bidang kuasa telah tidak secara khususnya dianugerahkan ke atas mahkamah syariah. Dengan itu, oleh kerana bidang kuasa ke atas kesalahan-kesalahan yang diwujudkan oleh s 377A atau s 377D Kanun Keseksaan masih belum dianugerahkan ke atas mahkamah syariah oleh undang-undang persekutuan, mahkamah sesyen mengekalkan bidang kuasa ke atas kesalahan-kesalahan ini. Dengan itu dalam kes ini, mahkamah sesyen merupakan mahkamah yang mempunyai bidang kuasa kompeten dan pemohon telah dihukum pemenjaraan oleh mahkamah sesyen secara sah di sisi undang-undang. Habeas corpus dengan itu tidak boleh diberikan (lihat ms 757B–D dan 760D–E).

(4) Persoalan sama ada seseorang itu adalah seorang Islam terletak kepada mahkamah syariah untuk memutuskannya. Prima facie mahkamah sesyen mempunyai bidang kuasa ke atas sesuatu kesalahan melainkan dan sehingga satu tuntutan kemudiannya mengenai beliau adalah seorang Islam disetujui atau terbukti sewajarnya. Jalan wajar yang harus diambil ialah untuk mengemukakan keterangan tambahan jika isu itu tidak dipersetujui (lihat ms 759F–I).

(5) Pendakwa Raya tidak mempunyai kuasa untuk memulakan, mengendalikan atau memberhentikan apa-apa prosiding bagi sesuatu kesalahan di mahkamah syariah, mahkamah adat atau mahkamah tentera. Mahkamah di mana sesuatu pertuduhan dikemukakan hanya memberi perhatian berhubung dengan, sebelum menyabit atas akuan bersalah sama ada kesemua unsur pertuduhan itu diakui, atau jika terdapat satu perbicaraan, sama

A ada kesemua unsur pertuduhan terbukti melampaui keraguan munasabah. Adalah tidak wajar bagi sesebuah mahkamah meminda sesuatu pertuduhan kepada pertuduhan yang lebih serius semata-mata kerana fakta-faktanya menyarankan kesalahan yang lebih serius. Itu akan membawa kepada gangguan budi bicara tunggal Peguam Negara di bawah perkara 145(3) Perlembagaan dan s 376(1) KAJ. Budi bicaranya tidak terbelenggu dan ia tidak merupakan hak mahkamah untuk menyoal keputusan itu (lihat ms 758G–H dan 759B–C); *Karpal Singh & Anor v PP* [1991] 2 MLJ 544; *PP v Lee Tin Bau* [1985] 1 MLJ 388; *PP v Lim Shui Wang & Ors* [1979] 1 MLJ 65; *PP v Datuk Harun bin Haji Idris & Ors* [1976] 2 MLJ 116 dan *Long bin Samat & Ors* [1974] 2 MLJ 152 diikut.]

[*Editorial Note*: The applicant has filed an appeal to the Court of Appeal vide Criminal Appeal No W–05–73–98.]

D **Notes**

For cases on habeas corpus, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 300–343.

For a case on the right to conduct prosecution, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) para 2040.

E For cases on the jurisdiction of the syariah court, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 384–391.

Cases referred to

F *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 (refd)

Datuk Harun bin Haji Idris v Officer-in-Charge, Pudu Prison [1981] 2 MLJ 72 (folld)

Gurbachan Singh's Application, Re [1967] 1 MLJ 74 (refd)

Gurdit Singh, Re [1933] MLJ 224 (refd)

G *James Lee Kui Wah, Re* 10 *Malall's Digest* (4th Ed, 1996 Reissue) para 578 (refd)

Haji Laugan Tarki bin Mohd Noor v Mahkamah Anak Negeri Penampang [1988] 2 MLJ 85 (refd)

Hashim bin Saud v Yahya bin Hashim & Anor [1973] 2 MLJ 85 (refd)

H *Karpal Singh & Anor v PP* [1991] 2 MLJ 544 (folld)

Kharak Singh v Uttar Pradesh AIR 1963 SC 1295 (folld)

Lim Chan Seng v Pengarah Jabatan Agama Pulau Pinang & Satu Kes Yang Lain [1996] 3 CLJ 231 (refd)

Long bin Samat & Ors v PP [1974] 2 MLJ 152 (refd)

Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala I *Lumpur* [1998] 1 MLJ 681 (distd)

Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib [1992] 2 MLJ 793 (folld)

Nor Kursiah bte Baharuddin v Shahril bin Lamin & Anor [1997] 1 MLJ 537 (distd)

PP v Datuk Harun bin Haji Idris & Ors [1976] 2 MLJ 116 (refd)
PP v Lee Tin Bau [1985] 1 MLJ 388 (folld)
PP v Lim Shui Wang & Ors [1979] 1 MLJ 65 (refd)
Ramachandra v State of Orissa AIR 1971 SC 2197 (refd)
Tun Datu Haji Mustapha bin Datu Harun v State Legislative Assembly of Sabah & Anor [1993] 1 MLJ 26 (refd)
Wong Lai Fatt v PP [1973] 2 MLJ 31 (refd)
Yeap Hock Seng v Minister of Home Affairs, Malaysia & Ors [1975] 2 MLJ 279 (folld)

Legislation referred to

Administration of Islamic Law (Federal Territories) Act 1993
Criminal Procedure Code (FMS Cap 6) ss 306, 365
Federal Constitution arts 5(2), 74, 121(1), (1A), 145(3)
Penal Code (FMS Cap 45) ss 376, 377A, 377C, 377D, 377E
Syariah Criminal Offences (Federal Territories) Act 1997 ss 1(2)(b), 25

Karpal Singh (*Jagdeep Singh Deo* and *Gobind Singh Deo* with him) (*Karpal Singh & Co*) for the appellant.

Ahmad Maarop (*Kamaludin bin Md Said* with him) (Senior Deputy Public Prosecutor) for the respondent.

Abdul Wahab J: The applicant, Sukma Darmawan Sasmitaat Madja, having pleaded guilty to a charge under s 377D of the Penal Code (FMS Cap 45)('the Code'), was convicted and sentenced to six months' imprisonment for an act of gross indecency by the Kuala Lumpur Sessions Court on 19 September 1998. He has filed an appeal against the sentence.

By this application, he is applying for a writ of habeas corpus. The ground for the application is that since both the persons committing the offence are Muslims, the sessions court had no jurisdiction to hear, convict and sentence the applicant by virtue of the operation of art 121(1A) of the Federal Constitution of Malaysia ('the Constitution') read with the Syariah Criminal Offences (Federal Territories) Act 1997 ('Act 559').

The main constitutional and statutory provisions

Section 377D of the Code provides:

> Outrages on decency
>
> Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.

The applicant was charged as follows:

> Bahawa kamu, pada bulan April 1998, pada sebelah malam di Kediaman Rasmi Timbalan Perdana Menteri di No 47, Jalan Damansara, dalam Wilayah Persekutuan Kuala Lumpur, telah melakukan perbuatan kelucahan

A melampau dengan Dato' Seri Anwar Ibrahim dengan membenarkan Dato' Seri Anwar Ibrahim memasukkan zakarnya ke dalam dubur kamu dan oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 377D Kanun Kesiksaan.

Articles 121 and 121(1A) of the Constitution provide:

B (1) There shall be two High Courts of co-ordinate jurisdiction and status, namely —

(a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry in Kuala Lumpur; and

C (b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;

(c) *(Repealed)*,

and such inferior courts as may be provided by federal law and the High D Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.

(1A) The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

E Section 25 of Act 559 provides:

Mana-mana orang lelaki yang melakukan liwat adalah melakukan suatu kesalahan dan apabila disabitkan boleh didenda tidak melebihi lima ribu ringgit atau dipenjarakan selama tempoh tidak melebihi tiga tahun atau disebat tidak melebihi enam sebatan atau dihukum dengan mana mana kombinasi hukuman itu.

F [Any male person who commits liwat shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.]

G *The preliminary objection*

The learned senior federal counsel and senior deputy public prosecutor, Datuk Ahmad Maarof had made a preliminary objection as to whether the applicant may avail himself of a writ of habeas corpus. It was submitted that: (a) the question of whether or not the sessions court had jurisdiction H could and should be dealt with by way of an appeal or revision under the Criminal Procedure Code (FMS Cap 6)('the CPC'); and, therefore (b) a writ of habeas corpus is not available.

If the application for a writ of habeas corpus is made under s 365 of the CPC, there might be basis for the argument. It might have been accepted that even though an appeal against conviction after a plea of I guilty is barred by s 306 of the CPC, the matter having otherwise come to the attention of the judge, could be revised in the event of illegality. The case of *Wong Lai Fatt v PP* [1973] 2 MLJ 31 (FC), may be referred to as an illustration.

The power under s 365 is discretionary since the section provides 'the Court may whenever it thinks fit ...'. Where there is an alternative basis for overturning a decision, whether by way of appeal or revision under the Code, those routes must first be exhausted. An application for a writ of habeas corpus under s 365 by a person who has pleaded guilty might be considered if there is evidence that he has sought revision and it has been denied. The cases cited: *Re Gurbachan Singh's Application* [1967] 1 MLJ 74; *Re Gurdit Singh* [1933] MLJ 224; *Ramachandra v State of Orissa* AIR 1971 SC 2197, were habeas corpus applications under the CPC where the court held that a writ of habeas corpus cannot be granted to a person who is serving a sentence passed by a court of competent jurisdiction. The Federal Court in *Datuk Harun bin Haji Idris v Officer-in-Charge, Pudu Prison* [1981] 2 MLJ 72 (FC), came to the same conclusion in respect of a superior court.

However, the learned En Karpal Singh has ensured that the applicant also applied under art 5(2) of the Constitution:

> Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

This application is a complaint that the applicant has been unlawfully detained. It is not a general allegation that his imprisonment is unlawful. He has given specific reasons for his complaint. If it is true as alleged that the sessions court has no power to try, convict and sentence in respect of a charge for sexual relations between two male Muslims as art 121(1A) of the Constitution read with s 25 of Act 559 seems to suggest, then his trial, conviction and sentence is in substance unlawful, and no plea of guilty could cure that defect. That defect is not one of merely acting beyond jurisdiction (often incorrectly termed 'out of jurisdiction'), where an appeal or revision would be the correct procedure, but one where the substratum of jurisdiction itself may not exist. While an appeal is the proper procedure in a case of a court of competent jurisdiction acting beyond jurisdiction, it is much less obvious in a case where the question is whether the court is a court of competent jurisdiction.

Article 5(2) of the Constitution makes it mandatory for the court to hear the complaint and unless satisfied that the detention is lawful, the court must order the person to be produced before it and to release him: *Yeap Hock Seng v Minister of Home Affairs, Malaysia & Ors* [1975] 2 MLJ 279. It is not necessary for an applicant to show there is no other process available (see *Kharak Singh v Uttar Pradesh* AIR 1963 SC 1295). This provision was included in the Constitution notwithstanding that there already existed provisions for directions in the nature of habeas corpus in the CPC. Section 365 of the CPC cannot be read as to restrict the meaning of art 5(2). The term detention as used in art 5(2) must be given a wide meaning to encompass arrest, remand, imprisonment or any other form of custodial limitation of the liberty guaranteed under art 5, howsoever it may be termed. Even if there is avenue for an appeal or revision, it

A cannot be said that in such a case, the High Court has no power to hear an application for habeas corpus. It is essential to consider the circumstances of the case. In this case, the applicant is serving sentence. If on an appeal, it is held that the sessions court had no competent jurisdiction, he would have lost his liberty unlawfully while waiting for his appeal or revision to be heard, and the court cannot be party to it. Thus, in a matter involving not merely a question of exceeding its jurisdiction but the competency of the court itself, and an applicant is being detained or imprisoned by an order of that court, habeas corpus must be available as a remedy under art 5(2).

To summarize, the applicant has complained his imprisonment is unlawful. He has given specific reasons for his complaint. The respondent must answer the reasons given to the satisfaction of the court, and if the court is not satisfied, then the court must in terms of art 5(2) order that he be produced before the court to be released. That upon a consideration of the merits the application for a habeas corpus would fail is no ground for refusing to hear a habeas corpus application under art 5(2), for to do so would prejudge the merits of the application itself.

The writ, to give it its full name, of *habeas corpus ad subjiciendum* (that you have the body to submit or answer), commonly known as the writ of habeas corpus, is a prerogative process for the securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention. The court would be taking a major step backwards contrary to the letter and spirit of art 5 of the Constitution if it were to accept the preliminary objection and order the applicant to rely on the appeal procedure alone in this case.

Given these considerations, the court dismissed the preliminary objection. On further consideration of the matter at the end of the submissions, I see no reason to change that ruling on the preliminary objection.

The application for a writ of habeas corpus

The applicant now claiming to be a Muslim, was charged with an offence under s 377D of the Code in the sessions court. The question before the court is whether the operation of art 121(1A) read with s 25 of Act 559, has ousted the jurisdiction of the sessions court to the syariah court over the applicant in respect of his admitted act of sodomy.

Jurisdiction: Article 121(1A) of the Constitution and item 1, List 2 — States List of the Ninth Schedule ('item 1')

It is useful in this regard to return to the exact words of the Constitution.

Article 121(1A) provides:

> The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.

Item 1 provides:

> Except with respect to the Federal Territories of Kuala Lumpur and Labuan, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, *except in regard to matters included in the Federal List*; the constitution, organisation and procedure of Syariah courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, *but shall not have jurisdiction in respect of offences except in so far as conferred by federal law*, the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom. (Emphasis added.)

The reference to item 1 is relevant since Parliament is legislating for the purposes of laws for persons professing the religion of Islam in respect of the Federal Territories of Kuala Lumpur and Labuan: see item 6(c), Federal List, Ninth Schedule of the Constitution.

What then is within the jurisdiction of the syariah court, under Act 559, and specifically, s 25 thereof?

The approach to be applied in the interpretation of a constitution was provided by the Federal Court in *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 (FC) at p 32:

> In interpreting a constitution, two points must be borne in mind. First, judicial precedent plays lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way — 'with less rigidity and more generosity than other Acts' (see *Minister of Home Affairs v Fisher* [1979] 3 All ER 21). A Constitution is *sui generis*, calling for its own principles of interpretation suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case:
>
> > 'A constitution is a legal instrument given rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms.'
>
> The principle of interpreting constitutions 'with less rigidity and more generosity' was again applied by the Privy Council in *Attorney General of St Christopher, Nevis and Anguilla v Reynolds* [1979] 3 All ER 129.

A The meaning of 'jurisdiction' as used in art 121(1A) must necessarily be addressed.

Of power to make law and jurisdiction of courts

B It is a basic principle of art 74 of the Constitution that if a matter is listed in a Federal List in the Ninth Schedule, the Federal Parliament has the power to make laws in respect of that matter. Likewise, in the case of a state with regard to matters in the State List in the Ninth Schedule ('the State List'). There is also the Concurrent List in respect of which matters both the federal and the state legislatures have power to legislate, and C art 75 provides the rule to be applied when a state law is inconsistent with a federal law.

The State List is a list of the matters over which the state legislature is given power to legislate. In the particular context of the syariah courts, item 1 quoted above provides the outer limits of the authority of the state D to set up and empower the syariah courts. It is obvious therefore that it does not directly create and empower the syariah courts. A syariah court would not exist until the state exercises its power under item 1 of the State List to create it. Likewise, a syariah court so created cannot have jurisdiction over a matter unless a state law empowers it.

In *Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib* [1992] E 2 MLJ 793 (SC) at p 800, the Supreme Court held that the first step of any consideration is that the civil courts would be denied jurisdiction in syariah matters within the states' legislative competence only when and to the extent the syariah courts are by law expressly conferred with such a jurisdiction:

F

> It is obvious that the intention of Parliament by art 121(1A) is to take away the jurisdiction of the High Courts in respect of any matter within the jurisdiction of the syariah court: *Dalip Kaur v Pegawai Polis Daerah, Balai Polis Daerah Bukit Mertajam & Anor* [1992] 1 MLJ 7. I am therefore of the opinion that when there is a challenge to jurisdiction, as here, the correct approach is to first see whether the syariah court has jurisdiction *and not* G *whether the state legislature has power to enact the law conferring jurisdiction* on the syariah court. The validity of a state law can only be questioned in a separate proceeding under art 4(3) of the Federal Constitution ... . And by art 4(4) read with art 128, only the Supreme Court may declare any such law invalid in the proceedings referred to in art 4(3). (Emphasis added.)

H In *Lim Chan Seng v Pengarah Jabatan Agama Pulau Pinang & Satu Kes Yang Lain* [1996] 3 CLJ 231, the view was expressed thus:

> ... by itself inter alia, art 121(1A) does not automatically confer jurisdiction to the syariah court, even in respect of matters that fall under the State List of the Ninth Schedule. To confer the jurisdiction, the state must first act upon the power given to it by arts 74 and 77 of the State List, and I accordingly enact laws conferring the jurisdiction. Only then will the matter come under the jurisdiction of the syariah court to the exclusion of the civil court ... .

It has been said that the High Court in *Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur* [1998] 1 MLJ 681 adopted a

different approach, taking the view that so long as it is a matter in the State List within the purview of the syariah court, then that matter is not within the jurisdiction of the civil courts. In that case, it was held that whether a person is Muslim or not is a matter for the syariah court to determine.

If that is a correct interpretation of *Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur*, and that interpretation is applied to offences, it could logically suggest that a whole range of offences otherwise applicable to all persons may not be chargeable against Muslims in our criminal courts even if no corresponding offence has been enacted into law by the relevant legislative body authorized to do so under item 1.

In *Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur*, the applicant had applied for a declaration that his renunciation of the Islamic religion by a deed poll is in accordance with the law and valid, and that he does not require the consent of the defendant to renounce the religion of Islam. There is no express provision with regard to such procedure and matter in the Administration of Islamic Law (Federal Territories) Act 1993. Thus there were in fact no express provision as to whether the matter is to be dealt with in the civil courts or the syariah courts. In those circumstances, and following the reasoning of Harun Hashim SCJ in *Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib*, that from the beginning, the makers of the Constitution clearly intended that Muslims in this country be governed by Muslim family law as evident from the Ninth Schedule, and that the purpose of art 121(1A) was to grant exclusive jurisdiction to the syariah courts of the administration of Islamic laws, the High Court held that the absence of express provision with regard to the procedures for renunciation of the Islamic religion by the syariah courts does not confer upon the civil courts jurisdiction over that matter.

Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur dealt with an issue of Islamic law, which is clearly in the purview of the state. It dealt with a situation where there were no legislation in a matter clearly within the power of the state to make law. It dealt with a different set of circumstances. It did not deal with, as in the case before this court, offences where there is a specific power given in the Federal List to Parliament.

The Constitution, while using the term 'power' with regard to making laws in art 74, avoided using the word in art 121(1A). Instead the phrase used is 'the jurisdiction of the Syariah courts'. There is and in my view, a very clear distinction between the 'power to make law', and the 'jurisdiction of the Syariah courts'. The State List gave power to the state in matters set out therein, to make law. One of the powers given to the state is 'creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List'. But although the state may create such laws, the syariah court has 'jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph', that jurisdiction itself is limited to jurisdiction in respect of offences 'in so far as conferred by federal law'.

A syariah court is thus not a court of inherent jurisdiction. It is created by the power in item 1, and it relies on federal law for its jurisdiction over offences: *Nor Kursiah bte Baharuddin v Shahril bin Lamin & Anor* [1997] 1 MLJ 537.

Item 1 gives power to the state to make laws to set up syariah courts, to have jurisdiction over persons professing the religion of Islam, but only in respect of Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the state; Malay customs; zakat, fitrah and baitulmal or similar Islamic religious revenue; mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters in the Federal List. The power to make law for criminal law is in the Federal List.

A further qualification is 'but shall not have jurisdiction in respect of offences except in so far as conferred by federal law'. The further qualification emphasizes the qualification made earlier, that the power granted to the state does not extend to creation of criminal laws, and where offences are created in the course of legislating on matters within the state's power to make laws under item 1, the syariah court would have jurisdiction over such offences only to the extent jurisdiction is conferred upon it by federal law.

For the foregoing reasons, *Nor Kursiah bte Baharuddin v Shahril bin Lamin & Anor* is distinguishable since in that case a custody order had been issued by the syariah court, being a court of competent jurisdiction. Following *Mohamad Habibullah bin Mahmood v Faridah bte Dato Talib*, this court must in this case, first see whether Parliament has in fact conferred jurisdiction upon the syariah court, and not whether the Parliament has power to enact the law conferring jurisdiction on the syariah court.

Of physical acts and offences: Jurisdiction of the courts

The applicant pleaded guilty to the charge under s 377D of the Code for the offence of gross indecency, ie to allow Dato' Seri Anwar Ibrahim to perform an act of sodomy, that is 'membenarkan Dato' Seri Anwar Ibrahim memasukkan zakarnya ke dalam dubur kamu'.

It is trite that committing an act alone is not an offence. An act becomes an offence if a law makes it into an offence. Except perhaps in the case of an absolute offence, the combination of physical acts constitutes the offence. There is a clear distinction between an offence and the act one is accused of. The act and the offence are not synonymous.

Various offences are routinely created by state law in respect of the matters in the State List, being a necessary adjunct, for effective enforcement

of such laws. Since the Constitution provides for a single system of administration of justice under item 4 of the Federal List in the Ninth Schedule, such offences are tried in the courts set up under the Courts of Judicature Act 1964.

The only exception to this is the syariah courts for the specific purposes in item 1 of the State List, and their jurisdiction over offences are to the extent conferred by federal law. Article 121(1A), added to the Constitution in 1988, could not have been intended, and therefore cannot be interpreted to have such consequences as would alter the basic structure of the Constitution pertaining to jurisdiction over offences. It has to be read within the strict literal meaning of its terms.

Item 1 states clearly that the syariah court has 'jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in item 1' but, 'shall not have jurisdiction in respect of offences except in so far as conferred by federal law'. In simple terms, the syariah court has jurisdiction over all Muslims in respect of the various matters stated in item 1, except for offences. With regard to offences by persons professing the religion of Islam against precepts of that religion, the syariah court shall have jurisdiction only to the extent it is conferred by federal law.

Section 1(2) of Act 559 provides that the Act applies to persons professing the religion of Islam ('Muslim') in the Federal Territories of Kuala Lumpur and Labuan. Section 1(2) of Act 559 read with item 1 means that the basis of the Kuala Lumpur Syariah Court's jurisdiction in relation to offences is therefore not only that the accused is a Muslim in Kuala Lumpur, but that the offence is also one over which it is conferred jurisdiction by federal law. There is no requirement that both parties to the act of sodomy must be Muslims, since jurisdiction is conferred on the basis of the offence and not that the parties are Muslims. That the offence of 'liwat' is one over which the syariah court has been conferred jurisdiction by federal law has not been disputed by the respondents in this case. Therefore the court also concludes that the offence of 'liwat' is an offence within the jurisdiction of the syariah court. The court also concludes that in view of s 1(2)(b) of Act 559, the offence of 'liwat' in the syariah court requires that the accused be a Muslim.

To summarize, the factors that confer jurisdiction to the syariah court in respect of an offence are:

(a) the person charged is a Muslim;

(b) the offence is committed within the geographical jurisdiction area of the syariah court; and

(c) a federal law has conferred jurisdiction to the syariah court over the offence.

The court therefore agrees with En Karpal Singh that jurisdiction over the offence of 'liwat' under Act 559, defined as sexual relations between male persons, of whom the accused is a Muslim, by the operation of art 121(1A) of the Constitution is solely within the jurisdiction of the syariah courts,

A and that the sessions court has no jurisdiction whatsoever over that offence of 'liwat'.

However, reading art 121(1A) together with item 1, jurisdiction is conferred to a syariah court over an offence, not by a description of the act complained of. The effect of art 121(1A) then is to confer to the syariah B court exclusive jurisdiction over the offence of 'liwat', not the act of sodomy per se.

Section 377D of the Code exists under the power given to Parliament to make laws in respect of criminal law under item 4 and item 4(h). The Code is applicable to every person (s 2).

C The jurisdiction of a syariah court is dependent upon being conferred jurisdiction over the offence by federal law; therefore, art 121(1A) does not remove the jurisdiction of the sessions court over a Muslim for any offence jurisdiction over which has not been specifically conferred upon the syariah court. In the context of this case, the jurisdiction over the offences created by s 377A or s 377D of the Code not having been D conferred upon the syariah court by federal law, the sessions court retains jurisdiction over these offences.

Offences of indecency: Liwat and gross indecency

E Every person may have a different view of what is indecent. Our individual perception of what is indecent depends upon our upbringing, which includes religious, cultural and family values. Considering the racial, cultural and religious diversity in Malaysia, Parliament has seen fit to legislate, not against all acts that a particular individual perceives as indecent, but against those generally accepted as grossly indecent. Of the grossly indecent F acts Parliament saw fit to legislate, gross indecency in s 377D is the widest in meaning and the least serious offence, attracting imprisonment only of up to two years. Section 377E, inciting a child under 14 years old to an act of gross indecency is more serious, with punishment of up to five years and whipping. Even more serious is carnal intercourse against the order of nature with consent, attracting punishment in s 377B of imprisonment up G to 20 years and whipping. Most serious is carnal intercourse against the order of nature without consent, which attracts a minimum imprisonment term of five years under s 377C, and which may extend to 20 years, and whipping.

Part IV of Act 559, on the other hand, gives to the syariah court H jurisdiction over specific offences relating to decency. These are for incest, prostitution, procuring sexual intercourse out of wedlock, act preparatory to sexual intercourse out of wedlock, sexual relations between male persons, sexual relations between female persons, khalwat or close proximity, male person posing as woman, and indecent acts in a public place. Section 25 I in this Part IV created the offence of 'liwat', defined in s 2 thereof as sexual relations between male persons.

While s 377D of the Code created the offence of gross indecency, s 25 of Act 559 created the offence of sexual relations between male persons.

These are two entirely different offences. While s 25 confines itself to sexual relations between two male persons, the offence under s 377D covers a wider range of acts of gross indecency.

But the common denominator of all these offences, and the offence of 'liwat' is that they are all grossly indecent acts. It is clear also there is no corresponding offence of gross indecency in Act 559.

Given that the basis of a syariah court's jurisdiction, as summarized earlier, is over the offence rather than the act itself, the fact that these are overlapping offences does not matter. While jurisdiction has been conferred by federal law to the syariah court over the offence of 'liwat' created under s 25 of Act 559, no such jurisdiction has been conferred upon the syariah courts over the offences under the Penal Code, and specifically, ss 377A or 377D thereof. The court therefore concludes that the sessions court retains jurisdiction over the offence of gross indecency even if committed by a Muslim. The cases *Re James Lee Kui Wah* 10 Mallal's Digest (4th Ed, 1996 Reissue) para 578 (*Cases on Native Customary Law in Sabah* by Tan Sri Lee Hun Hoe) and *Haji Laugan Tarki bin Mohd Noor v Mahkamah Anak Negeri Penampang* [1988] 2 MLJ 85 (SC) may be read with some profit in this respect.

Power of Attorney General/Public Prosecutor

Implicit in the above is the view that the offences of indecency under Act 559 can exist concurrently with the offences of indecency under the Code, in the same way as offences of different degrees of indecency can co-exist. Article 121(1A), read with item 1 of the State List operates to the effect that if jurisdiction over that offence — whether created by federal law or state law — is conferred upon the syariah court, the sessions court ceases to have jurisdiction. Until that jurisdiction is removed, the sessions court continues to have jurisdiction.

The power of the Public Prosecutor in respect of proceedings for an offence is provided by art 145(3) read with s 376 of the CPC. What is absolutely clear is that he has no power to institute, conduct or discontinue any proceedings for an offence in a syariah court, a native court or a court-martial. Given this limitation to the civil courts, the Public Prosecutor, constrained to consider the options available to him, has elected to charge the applicant under s 377D. But where the Public Prosecutor has made a decision, it is not for the court to question that decision. His discretion is unfettered: *Karpal Singh & Anor v PP* [1991] 2 MLJ 544 (SC); *PP v Lee Tin Bau* [1985] 1 MLJ 388; *PP v Lim Shui Wang & Ors* [1979] 1 MLJ 65 (FC); *PP v Datuk Harun bin Haji Idris & Ors* [1976] 2 MLJ 116; *Long bin Samat & Ors v PP* [1974] 2 MLJ 152 (FC). This leads us to the next question of the duty of a trial court.

Duty of a trial court

The sessions court, presented with the charge under s 377D and given the facts of the case, was right to have proceeded. There was no reason to act

as suggested in *Wong Lai Fatt v PP* [1973] 2 MLJ 31 (FC), to reject the plea of guilty. It is irrelevant to the court if the facts warrant a possibly more serious charge, or that the accused could have been charged in another court for another offence. A court, before which a charge is produced, is only concerned with, before convicting on a plea of guilty whether all the elements of the charge are admitted, or in the event of a trial, whether all of the elements of the charge are proven beyond reasonable doubt. It would be inconceivable and improper for the court, for example, upon being apprised of the facts, to amend the charge to a more serious charge merely because the facts suggest a more serious offence. That would amount to interference with the sole discretion of the Attorney General and Public Prosecutor under art 145(3) of the Constitution and s 376(i) of the CPC.

Other matters

In the course of submissions by En Karpal Singh, I had alluded to the question whether the applicant is a Muslim. There is nothing to say that the sessions court was informed that the applicant was a Muslim. His name does not indicate he is a Muslim. It is a Javanese name. Even before this court, there is no assertion by the applicant that he is a Muslim. Only the supporting affidavits to the application, deposed by his sister, Komalawati Sasmita At Madja and his counsel, En Karpal Singh, deposed that the applicant is a Muslim. I appreciate the fact no objection was taken by the senior federal counsel since it would have raised the issue whether a non-Muslim could depose as to whether another person is a Muslim or not. There is nothing in the sister's affidavit to say she is a Muslim. I mention these in passing for two reasons.

First that, following *Md Hakim Lee v Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur* that since whether a person has left the religion or not is for the syariah court to decide, it follows the question whether he is a Muslim is for the syariah court to decide. Or at the very least, by the assertion of that person or another Muslim who knows him. But it would be difficult to accept assertion by a third person who is not a Muslim or does not assert he or she is himself or herself a Muslim.

Second, that complications may arise if in each and every case there is first to be an inquiry whether a person is a Muslim or not, and whether an offence is within the jurisdiction of the sessions court before the latter could proceed. The better view is that the sessions court prima facie has jurisdiction over an offence, unless and until the claim of being a Muslim is made, and a conviction remains lawful until a subsequent claim of being a Muslim is conceded or properly established. This means that the proper course to be taken is by way of adducing additional evidence if the issue is not conceded upon an appeal.

To digress a little for the moment, I note that the punishment under s 25 is far lighter than under ss 377B and 377C of the Code creating the possibility that if a Muslim and a non-Muslim were to commit the offence together, the non-Muslim will face a heavier sentence for the same offence.

However, given the conclusions arrived at in this case, it is not necessary for this court to consider whether s 25 is contrary to art 8 of the Constitution, and whether 'liwat' is an 'offence by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List', or whether the offences over which federal law may confer jurisdiction to the syariah courts is restricted to those against the precepts of the religion of Islam, since these are not really essential in coming to a decision in this case on its particular facts. I have therefore decided not to proceed along the lines in *Hashim bin Saud v Yahaya bin Hashim & Anor* [1973] 2 MLJ 85 or alternatively *Tun Datu Haji Mustapha bin Datu Harun v State Legislative Assembly of Sabah & Anor* [1993] 1 MLJ 26 in respect of what is now s 84 of the Courts of Judicature Act 1964.

Conclusion

Since gross indecency under s 377D is a separate offence, and jurisdiction over it has not been conferred upon the syariah court by any federal law, art 121(1A) cannot come into operation to remove the jurisdiction of the sessions court in relation to that offence. The sessions court remains a court of competent jurisdiction; this court therefore can only conclude that as the applicant was lawfully sentenced to a sentence passed by a court of competent jurisdiction, habeas corpus cannot be granted.

In the circumstances, this application for a writ of habeas corpus is hereby dismissed.

Application dismissed.

Reported by Andrew Christopher Simon

End of Volume 4